

Questions 209: L-31 (1) Criterion 1 – Relevant Experience, on Page 70 last paragraph states “In addition to the information described above, the offeror shall also clearly identify and define the work to be performed (size, scope and complexity) by each entity (offeror, major or critical subcontractors, and/or members of joint ventures or LLC) under the offeror’s proposed approach to complete the work identified in the PWS of this solicitation.”

Since the RFP states in Criterion 1 on Page 70 “The Offeror shall provide information for no more than three (3) contracts for the offeror (or 3 separate contracts for any major or critical subcontractors and if a joint venture or a newly formed entity, 3 separate contracts for each of the members) where the work is/was relevant to this solicitation using the Experience and Past Performance Reference Information Form, Attachment L-2,” and since the L-2 form is not formatted to accommodate the provision of this information because the form is specifically structured to only include an ongoing or completed project, where is the offeror expected to provide the requested information?

If the requested information is to be provided as a separate narrative outside form Attachment L-2 but under our response to Criterion-1 is there a page limit for this narrative?

Answer: Section L.31(1) Criterion 1 – Relevant Experience. All information requested under Criterion 1 should be included in Attachment L-2 for each of the three contracts for the offeror (or 3 separate contracts for any major or critical subcontractors and if a joint venture or a newly formed entity, 3 separate contracts for each of the members). Attachment L-2 contains all of the information that should be submitted for Criterion 1. See answers to Questions 57-60 and 69. If the question pertains to where it should be described what work the individual members or major or critical subcontractors are to perform, this information should be described in the proposal under Section L. 31(2) Criterion 2 as well as described on Attachment L-2. The offeror should clearly identify and define the work to be performed by each entity and clearly label such. Attachment L-2 should be consistent with the information provided under Section L.31(2) Criterion 2.

Question 210: FAR 19.101 includes within its definition of “affiliates”: “(7) Control through contractual relationships...(ii) Joint venture – acquisition. . . . an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor.” Meaning that affiliation can occur where an “ostensible subcontractor” performs “primary or vital requirements of a contract.” RFP, Clause H.15 then requires offerors to list “major or critical” subcontractors and RFP, Clause L.29(a) states: “The term ‘major or critical subcontractor’ as used in this solicitation is defined as subcontractors proposed to perform the following services, regardless of dollar value, under this contract in the performance of Task Orders: Environmental Remediation, Decontamination, Demolition, Waste Management, Regulatory Services, Radiological Controls, and Safety.” Thus, it appears that DOE has identified essentially the entire potential scope of work for this Contract under RFP, Clause C.10 as “critical” or “vital” requirements of the solicitation such that performance of any of these activities by a large business teaming partner could create an “affiliation” as defined under FAR19.101 and 13 CFR 121.103(h)(4)-- and thereby would disqualify the offeror for award of a set aside contract. We assume that this is not DOE's intention, as it would unduly eliminate offerors (and competition) from this Solicitation? Therefore, what is the purpose of this “major or critical” subcontractor designation for purposes of size determination?” Would a large business be permitted to perform some portion of a critical service (“Environmental Remediation, Decontamination, Demolition, Waste Management, Regulatory Services, Radiological Controls, and Safety”) under this contract without being considered an affiliate? If yes, what percentage of a critical service could a large business perform before triggering the affiliation requirements?

Answer: Initially, the Department of Energy (DOE) does not decide size status of a business concern, nor does it determine affiliation for purposes of size status. The Small Business

Administration (SBA) has the sole authority to determine the size of a business concern, including determining affiliation. See 13 CFR 121.103 regarding how the SBA determines affiliation. However, the DOE did not label the entire scope of work as primary or vital; nor did it identify the terms "major or "critical" to be synonymous with "primary" or "vital." Although a large business can perform work under a total small business set-aside, the extent to and manner in which a large business can perform the work depends upon a number of factors. Therefore, offerors should consult with the SBA, review the 13 CFR Part 121 and FAR Subpart 19.1, as well as www.sba.gov.

However, offerors are reminded that of the requirement to comply with the Limitations on Subcontracting Clause, FAR 52.219-14, contained in Section I of the solicitation. This is different than the affiliation issues discussed above regarding size status and pertains to the percentage of costs of contract performance that must be incurred for employees of the small business concern. See FAR 52.219-14 Limitations on Subcontracting." For purposes of the sample task, at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

Question 211: L.31 and "Criterion 1-Relevant Experience" states: "The offeror shall provide information for no more than three (3) contracts for the offeror (or 3 separate contracts for any major or critical subcontractors and if a joint venture or a newly formed entity, 3 separate contracts for each of the members) where the work is/was relevant to this solicitation using the Experience and Past Performance Reference Information Form, Attachment L-2." We assume that this means that the offeror can only submit information on three (3) contracts TOTAL for this Criterion-1 inclusive of any major or critical subcontractors' contracts. Please inform offerors if this is not correct.

Answer: Section L.31(1) Criterion 1 – Relevant Experience. This is incorrect. The offeror shall provide information for no more than 3 contracts for the offeror (or 3 separate contracts for each major or critical subcontractors and if a joint venture or a newly formed entity, 3 separate contracts for each of the members). For example, if the offeror has 2 major or critical subcontractors, then the offeror shall provide information for no more than 3 contracts for the offeror and no more than 3 contracts for each of the two major or critical subcontractor. In this example, no more than 9 total Attachment L-2's should be submitted, i.e. three for each company).

Question 212: L.31 and "Criterion 4-Relevant Past Performance" does not explicitly state that offeror may include relevant past performance of major or critical subcontractors that DOE will then evaluate as part of an offeror's proposal for purposes of making the best value award decisions. Please clarify in L.31 that offerors may include relevant past performance information of major or critical subcontractors.

Answer: Section L.31(4) Criterion 4 – Relevant Past Performance. Criterion 4 states that "The offeror shall provide the Past Performance Questionnaire (See Section L, Attachments L-4) for the same contracts identified in the Criterion 1 – Experience and on the Experience and Past Performance Reference Information Form, Attachment L-2, section of the offeror's proposal to the client point of contact identified on the Experience and Past Performance Reference Information Form, Attachment L-2." Attachment L-2 fulfills the information required under both Criterion 1 and Criterion 2. As stated in section M.6 EMCBC-M-1004 Technical Evaluation "Relevant past performance information for the offeror, any major or critical subcontractors and if a joint venture or newly formed entity, each member, in performing relevant work completed within the last three (3) years or currently ongoing which is similar in size, scope and complexity to that described in the PWS will be evaluated." See also answers to Questions 65, 66, 68 and 70.

Question 213: Is there a limit on the TOTAL number of contract references that may be submitted for Relevant Past Performance under L.31 (Criterion 4-Relevant past performance)? Please inform all offerors of any such limit.

Answer: Section L.31(4) Criterion 4 – Relevant Past Performance. The offeror shall provide information for no more than 3 contracts for the offeror (or 3 separate contracts for any major or critical subcontractors and if a joint venture or a newly formed entity, 3 separate contracts for each of the members) on Attachment L-2 for Criterion 1 and Criterion 4. Three Attachment L-2 are to be provided for each offeror, three for each member of a joint venture or newly formed entity (if applicable, and three for each major or critical subcontractor. The total number of contract references is dependent on the number of major or critical subcontractors or team members in addition to the offeror. For example, if the offeror has 2 major or critical subcontractors, then the offeror shall provide information for no more than 3 contracts for the offeror and nor more than 3 contracts for each major or critical subcontractor. In this example no more than nine total Attachment L-2's could be submitted (three for each company). See answers to Questions 61, 65 and 68-70.

Question 214: L.31 EMCBC-L-1004, Criterion 1 – Relevant Experience, paragraph 1. The RFP states that “Work performed with values ranging from \$5M to \$100M and durations of 2 to 4 years and/or work being performed or has been performed under two or more contracts/projects concurrently is considered to be relevant.” Does this statement mean that offerors can combine two or more separate projects, performed at different locations under different contracts, together under a single project description?

Answer: Section L.31(1) Criterion 1 – Relevant Experience. No, this does not mean that offerors can combine two or more separate projects performed at different locations under different contracts together under a single project description.

Question 215: In Section L Criterion 1, last paragraph on Page 70, the RFP states “In addition to the information described above, the offer shall also clearly identify and define the work to be performed (size, scope, and complexity) by each entity.....to complete the work in the PWS for this solicitation.” In this sentence, does the PWS mean the work scope for the sample task or the scope of work for the IDIQ in section C. If this refers to the Section C PWS, defining the size and complexity will be an issue because we do not know the actual task orders to be released under the IDIQ contract. Please clarify.

Answer: Section L.31(1) Criterion 1 – Relevant Experience. The definitions of size, scope, and complexity which may be considered similar to the work identified in the PWS (Section C) for this solicitation are included in the first paragraph of Section L.31(1), Criterion 1.

Question 216: The instructions for completing the Past Performance Questionnaire, Attachment L-4, state that the completed questionnaires should be submitted directly to DOE. Is there any other information related to relevant past performance that should be provided in this section (Criterion 4) of the proposal? For example, should a table of the projects and the corresponding points of contact who were requested to complete each Past Performance Questionnaire be submitted? If yes, is there a page limit for this information on the Past Performance Questionnaires?

Answer: See answer to Question 65.

Question 217: Reference: L.33 List of Section L Attachments, L-2 Experience & Past Performance Reference Information Form. Question: Does the offeror have permission to vary the format of Form L-2 (while maintaining all required content) and use photos, colors, text boxes, etc. to enhance readability?

Answer: Section L.31(1) Criterion 1 – Relevant Experience. Offerors may use photos, colors, text boxes, etc. on Section L.31, Relevant Experience Attachment L-2, Experiences & Past Performance Reference Information Form as long as the offeror complies with the instructions outlined in Section L.29 concerning general proposal preparation including, but not limited to, font size, page margins, page size, etc. Additional Part A of Attachment L-2 may not exceed 3 pages for each Attachment L-2 submitted.

Question 218: Will the Government allow offeror's to submit a 2 page Executive Summary excluded from page count?

Answer: The RFP does not request a two page Executive Summary be included in the offeror's proposal; therefore, if an Executive Summary is provided as part of the offeror's proposal, it will be removed and will not be read or evaluated. See answers to Questions 56 and 57..

Question 219: Section L.29, item (j) requires that a Cross-Reference Matrix be included in Volume II. Should this Cross-Reference Matrix include only information for Volume II, or should it also include proposal information for Volumes I and III?

Answer: Section L.29 (j) states that "The offeror shall provide a Cross-Reference Matrix which correlates the proposal by page and paragraph number to the Performance Work Statement (PWS), Section L, and Section M. The Cross-Reference Matrix shall be inserted in the offeror's proposal immediately following the Table of Contents for Volume II." The Cross-Reference Matrix shall only include information pertaining to Volume II; it should not contain proposal information for Volumes I and III.

Question 220: I know that you are still working on questions/answers. I was wondering if you are addressing the labor rates to be used on the project since it says both Davis Bacon and Service Contract. Will a future addendum address this? Thanks for your time.

Answer: Section L.31 – Criterion 2 Technical and Management Approach (Sample Task) and Attachment L-3. For purposes of the sample task, offerors should assume that the Service Contract Act (SCA) and the SCA wage rates will apply to the work to be performed under the Sample Task, Attachment L-3; Offerors should assume that the Davis Bacon Act (DBA) and the DBA wage rates are not applicable to the work to be performed under the Sample Task, Attachment L-3. Although it is contemplated that most task orders will be primarily SCA covered work, DOE recognizes that there may be work performed under task orders, which may include DBA covered work because of the nature of the work or because of an offeror's approach. However, for purposes of this sample task, the wage rates provided should be used for all employees. The solicitation will be amended.

Question 221: We assume that future task orders to be performed under this contract will be defined as services for purposes of FAR 52.219-14(b)(1). We also assume, however, that some task orders may be defined as general construction services such that FAR 52.219-14(b)(3) applies and the small business concern is required to perform at least 15% of the cost of the contract, not including the costs of materials, with its own employees. Please confirm that our understanding is correct.

Answer: It is anticipated that the Task Orders to be issued under the solicitation will be defined as services. It is not anticipated that most of the Task Orders issued under any resulting contract will be defined as general construction services. For purposes of the sample task, DOE will use FAR 52.219-14(b)(1) whereby "at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern." See also 13 CFR 125.6 regarding limitations on subcontracting and in particular 13 CFR 125.6(e) for definitions of the terms contained in FAR 52.219-14(b)(1). See also Question 220.

Question 222: We are a major subcontractor bidding as a part of a small business team for this solicitation. As we understand the RFP, DOE has provided two mechanisms for major Subcontractor cost details to be included in the proposal as follows:

- The Offeror can expand the pricing schedules, providing the same detail required of the Offeror in a separate section for each major Subcontractor; or
- The Major Subcontractors can submit a separate set of schedules for their portion of the work in a sealed package, with the Offerer reporting only total dollars and hours at the appropriate points in the schedules, under the Subcontractor lines.

Can you confirm that our understanding is correct?

Answer: See answers to Questions 201-203.

Question 223: Reference Section L, item L.31, the Instructions prescribe that the format and content of Volume II, Technical Proposal shall consist of:

Criterion 1 – “Relevant Experience” - requires the use of the Past Performance Reference Information Forms ONLY (Attachment L-2)

Criterion 2 – “Technical & Management Approach” – requires a description of the technical approach to safely and effectively perform the Sample Task

Criterion 3 – “Organization and Staffing” - requires a description of the approach to staffing with qualified management personnel

Information Form is limited to three (3) pages. See Section L.31(1), second paragraph.

Criterion 4 – “Relevant Past Performance” will consist of completed client questionnaires submitted directly to DOE as well as a discussion of problems encountered with the contracts.

In the case of multiple companies bidding together in a team, LLC or JV structure, and in consideration of the above prescribed format designating that the first section of the proposal is comprised of Past Performance Reference Forms, can DOE identify whether a brief discussion of the Offeror's team structure (make-up) and general qualifications would be useful for the evaluation of proposals and if so, will DOE either add 5 pages for a Team, LLC or JV “Introduction” section to be presented in advance of Criterion 1 or increase the page limit for Criteria 2 & 3 to allow for this critical information to be conveyed?

The current page limitation for Criterion 2 & 3 requiring a comprehensive discussion of elements in the SOW, adherence to the above Section L instructions (format and content) as well as a description of the technical approach for completion of the sample task does not provide sufficient space to describe the basis and merits of our teaming structure.

Answer: See answers to Questions 57-60, 69 and 209.

Question 224: There appears to be a discrepancy between the answer in Question 9 of the Q&As issued on 09-01-09 and Section L, Criterion Instructions. Per Question 9: DOE states that the ONLY information to be submitted in Criterion 1 are the L-2 forms. However, per Section L, Paragraph L.31(1), last paragraph page 70, 3rd line from the bottom, the RFP states "In addition to the information described above, the offeror shall also clearly identify and define the work to be performed (size, scope, and complexity) by each entity...under the Offeror's proposed approach to complete the work identified in the PWS... The instructions in section L appear to be asking narrative defining roles of offeror and subcontractors in addition to the L-2s. Can you please clarify?

Many proposers are made up of LLCs or JVs and have identified major or critical subcontractors, which per the RFP requirements, will be providing L-2 forms. We would assume that DOE would appreciate an introduction to the prime/subcontractor approach in order to understand who is the

offeror (and/or members of JV/LLCs) and who are major/critical subcontractors when evaluating the experience presented in the L-2s. Would DOE consider allowing up to 2 pages to present the prime/sub arrangement and explain the roles of each entity?

Answer: Section L.31(1) Criterion 1- Relevant Experience -- The first two paragraphs are not two different proposal requirements. See answers to Questions 52 and 209.

Question 225: H.14 EMCBC-H-1005 Will the government reimburse contractors for the cost of overall program management of the contract?

Answer: Clause H.14 EMCBC-H-1005 Ordering Procedures, first paragraph – Clause H.14 states that “Costs not attributed to the performance of each individual Task Order will not be allowed without the prior written consent of the DCO or CO.” The costs for “overall program management of the contract” are not allowable as direct costs or separate costs to be submitted for reimbursement under the contract. Contractors should handle or allocate such costs and other costs not directly attributable to a specific Task Order in accordance with their established accounting procedures and system.

Question 226: Does DOE consider it acceptable to isolate stand-alone projects that our firm delivered as part of a larger M&O type of contract as separate past performance examples? It would be our preference to isolate and submit one or two individual projects which have separate schedules, budgets and performance metrics that are more similar in size, scope and complexity to task orders anticipated under this contract.

Answer: It is acceptable to submit information regarding a stand-alone project that an offeror performed as of a larger M&O type contract under Criterion L.31(1) Relevant Experience and Criterion L.31(4) Relevant Past Performance. The offeror should clearly identify such and provide the information requested in Section L. 31(1) and L.31(4).

Question 227: RFP Section L.29(h), top of Page 76: The RFP states that “foldouts may only be used in the Technical Volume for schedules and may be used in the Cost Volume for schedules, large tables, charts, graphs, diagrams and other schematics.” The RFP requires a schedule in the Cost Volume; however, charts, graphs, diagrams, etc. are typically in the Technical Volume. Could this be an error, and it was meant to say “Technical Volume for schedules, large tables, charts, graphs, diagrams, and other schematics, and used in the Cost Volume for schedules”? With the nature of the information that needs to be presented in the Technical Volume, the use of foldouts for graphics (i.e. charts, graphs, diagrams, etc.) would be beneficial in providing the DOE with the best response to the RFP requirements and provide DOE with complete and responsive proposals. With the restrictive page count and the large font size required, it is difficult to answer all of the requested information without using foldouts for graphical presentation.

Answer: L.29 Proposal Preparation Instructions - General (h) Page Description states “Foldouts of charts, tables, diagrams or design drawings shall not exceed 11 x 17 inches. Foldout pages shall fold entirely within the volume. Page margins for the foldouts shall be a minimum of one inch at the top, bottom and each side. Foldouts may only be used in the Technical Volume for schedules and may be used in the Cost Volume for schedules, large tables, charts, graphs, diagrams and other schematics.” See answers to Questions 6, 7, 13, 18.

Question 228: Please refer to Clause I.33 FAR 52.219-14 Limitations on Subcontracting. (DEC 1996). If a small business subcontractor is included as part of the FAR 9.6 Team (For example a small business LLC plus a small business subcontractor), can the work performed by the small business subcontractor be counted towards the 50% list in Far clause 52.219-14?

Answer: FAR 52.219-14 (b)(1) states that “At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.” However,

these types of arrangements are very fact specific and the DOE is not aware of the particular arrangements with the LLC members or joint venture members or the small business subcontractor that form the basis of the question above. However, in the scenario described above, the personnel costs of the small business subcontractor cannot be counted towards the small business offeror performing at least 50 percent of the cost of contract performance incurred for personnel. All offerors should thoroughly review 13 CFR 125 and in particular 13 CFR 125.6, Prime Contractor Performance Requirements (limitations on subcontracting). See also answer to Question 221.

Question 229: Please refer to L.29 EMCBC--L-1002 Proposal Preparation Instructions – General. It is state in this section that “the term “offeror” as used in this Section L refers to the single legal entity submitting the offer which may be a “contractor team arrangement” as that term is defined in FAR 9.601. The offeror may be preexisting or a newly formed business entity for the purposes of competing for this Contract.” May the “Offeror” be a small business Joint Venture plus a large business subcontractor?

Answer: L.23 DOE-L-1012 Guidance for Prospective Offerors – Impact of Teaming Arrangements on Small Business Status -- Depending upon the facts, an offeror may be a small business concern with a large business subcontractor. Offerors are reminded to review I.33 FAR 52.219-14 Limitations on Subcontracting and L.23 DOE-L-1012 Guidance for Prospective Offerors – Impact of Teaming Arrangements on Small Business Status. Offerors are reminded that affiliation for purposes of determining size status is within the exclusive authority of the Small Business Administration, including joint ventures or the use of subcontractors. See answer to Question 210. Offerors are also reminded of the Limitations on Subcontracting requirements contained in the solicitation **I.33 FAR 52.219-14 Limitations on Subcontracting. (DEC 1996), L.32 (14)**. See answer to Questions 221 and 228.

Question 230: Ambiguity exists in the RFP with the inclusion of both I.119 (DEAR 952.231-71(Insurance-litigation and claims)) and I.149 (FAR 52.228-7 (Insurance - Liability to Third Persons)). Please delete FAR 52.228-7, as this is a DOE contract and DEAR 952.231-71 is required to be included for the cost-re task order per 48 CFR 931.205-19.

Answer: The resultant contract will be governed by both the FAR and the DEAR clauses.

Question 231: Please delete FAR 52.246-13 (Inspection - Dismantling, Demolition, or Removal of Improvements) from Section I (I.98), because the clause inappropriately places the risk of loss on the Contractor for damage to property caused by defective workmanship. Specifically, this clause (52.246-13) should be deleted because (i) it conflicts with the Government's assumption of the risk of loss of property under 52.245-1, and (ii) conflicts with the explicit cost-reimbursement inspection clauses in RFP, E.6 (FAR 52.246-3 Inspection of Supplies - Cost-Reimbursement) and E.7 (FAR 52.246-5 Inspection of Services - Cost-Reimbursement) under which re-performance is an allowable cost but without additional fee/profit. Also, even for Fixed Price task orders, the RFP already includes E.3 (FAR 52.246-2 Inspection of Supplies - Fixed-Price) and E.4 (FAR 52.246-4 Inspection of Services - Fixed-Price) that requires contractors to re-perform defective performance without additional cost to the Government. If DOE does not remove this conflict and ambiguity from the contract by deleting FAR 52.246-13, please confirm that FAR 52.246-13 will only apply to fixed price contracts and then move the clause to Section E (Inspection and Acceptance) of the RFP.

Answer: FAR 52.246-13(Inspection - Dismantling, Demolition, or Removal of Improvements) would apply to work requiring dismantling, demolition, or removal of improvements. This clause does not apply to fixed price contracts only. There is not a conflict with the clauses cited above in the question.

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Questions & Answers 209-232
Posted 9/29/2009 (Set 1)

Question 232: Since this solicitation is for a total Small Business Set-Aside contract and Small Businesses are exempt from the Cost Accounting Standards (CAS), will DOE remove the following from the solicitation:

- I 78 - FAR 52.230-2 Cost Accounting Standards,
- I 79 - FAR 52.230-3 Disclosure and Consistency of Cost Accounting Standards; and
- L.32 (12) CAS Disclosure Statement review and audit reports on CAS compliance?

Answer: Section I.78 FAR 52.230-2 Cost Accounting Standards, I.79 FAR 52.230-3 Disclosure and Consistency of Cost Accounting Standards; and L.32 (12). While contracts/subcontracts with small businesses is one of the listed Cost Accounting Standards (CAS) exemptions at 48 CFR 9903.201-1(b)(3), negotiated subcontracts in excess of \$650,000 with large businesses and which are not otherwise exempt in accordance with 48 CFR 9903.201-1(b) would be subject to CAS requirements. The clauses at Section I.78, FAR 52.230-2(d) and Section I.79 FAR 52.230-3(d) require the contractor to include the substance of each of the respective clauses in any negotiated subcontract with a large business which is in excess of \$650,000 and which is not otherwise exempt from CAS requirements. The solicitation will not be revised.